

LAW REFORM COMMISSION



COMMISSION DE RÉFORME DU DROIT

EVALUATION OF COMMENTS RECEIVED
IN THE AREA
OF
FAMILY LAW

1976



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OF

FAMILY LAW

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Prepared by:

Carole Kennedy

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INTRODUCTION

The following report for the Commission was prepared from the Working Papers on Family Law and from the mail that preceded their release. The suggestions and opinions were divided into various categories as articulated below.

Part I deals with the analysis of the comments received before any of the Working Papers were published.

Many of these comments were made in answer to our appeal in the First Research Program (published in March 1972) wherein the Commission outline the areas of study in family law. Each letter received before January 1974 was examined and classified under the following five headings:

- 1) family court
- 2) family property
- 3) maintenance on divorce
- 4) divorce
- 5) other family law areas

In formulating its programme for Family Law, the Commission reflected the views which are evident in the letters which follow. As can also be seen, the recommendations reached in the various Working Papers reflect the public input.

The II, III, IV and V parts evaluate and give statistical data on the four Working Papers published by the Commission in the area of family law: The Family Court,

Family Property, Maintenance on Divorce and Divorce.

At the beginning of each section is a resumé of the comments received and a statistical Chart for each Working Paper; at the end is a detailed condensation of each letter received. In some cases, special mention is made of letters received before the release of a specific Working Paper where the author commented directly on the proposals.

Parts IV and V of this report deal with the last two Working Papers published by the Commission: Maintenance on Divorce, and Divorce released on July 15, 1975 and September 11, 1975 respectively. In glancing back at Part I and II, one can clearly see that comments continued well after the expiration of one year from the date of publication. Therefore, to obtain the proper perspective for all four Working Papers, ideally, one should give each Working Paper a one-year period for comments. Unfortunately, because a Final Report was requested by the end of January 1976, it is impossible to do so.

A second, and perhaps more important reason for the lack of response would be that of the mail strike which prevailed throughout Canada for some time. During this time, we contacted different groups and professionals by phone who were interested in the studies. These persons were then

asked to send their comments as soon as possible after the mail strike. It also seemed necessary to incorporate the views of those members of the Family Law Project Staff who spoke on the subject of the Working Papers to various groups across Canada and their opinions as to the general concensus among those with whom they spoke form part of this report.



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P A R T I

ANALYSIS OF SUGGESTIONS AND OPINIONS IN RESPONSE TO THE OUTLINE OF OUR PROGRAMME

The Commission received 220 letters from judges, lawyers, social agencies, psychiatrists and laypersons with their suggestions and opinions in answer to our appeal in the Commission's Research Program I (published in March 1972). It must be realized, of course, that the majority of these letters were written on behalf of associations and agencies and, therefore, the figure quoted above cannot exactly represent the total number of opinions expressed.

In the following summary, an attempt has been made to consolidate the suggestions received. Attached to this summary is the detailed outline of each letter: its date, the name and occupation of the originator and a resumé of their suggestions.

Divorce received the greatest response (94 out of 220 letters). Of the 94 letters, 64 were from the general public, 8 from lawyers, 8 from social agencies, 7 from judges, 4 from academics, 2 from Government Departments and 1 from a member of Parliament. It is safe to say that 99% of the letters suggested a shorter separation period as a

grounds for divorce. Approximately 75% preferred marriage breakdown as the only grounds for divorce. Although they all agreed on a shorter period for separation, the suggested time varied from six months to a year with a good number favouring "divorce on demand". Of those who favoured "divorce on demand", many thought that a waiting period of one year would be best for those couples with children. These are some other widely held suggestions (with the most popular listed first):

- 1) fairer custody laws for men
- 2) simplification of the Divorce Act
- 3) elimination of lawyers where possible
- 4) educate the public on the divorce laws
- 5) recognition of foreign decrees
- 6) government regulated fees for divorce cases

One person thought divorce should be granted to those who are married to incurables.

The second subject dealt with is the unification of the family courts. Of the total 220, 56 expressed opinions on this subject. This included 15 laypersons, 12 judges, 12 lawyers, 3 academics, 9 social agencies, 2 Government Departments, 1 psychiatrist and 2 members of Parliament. It was the general

opinion of all that a family court with a comprehensive and integrated jurisdiction would alleviate a considerable number of existing problems. They were also of the opinion that support services be directly attached to such a court in order to facilitate and encourage reconciliation in divorce proceedings and give direct counselling for all family law matters. Three out of the 56 did not feel a change was needed. Among those who favoured a unified family court; these were some of their suggestions:

- 1) that jurisdiction of such a court be at the federal level
- 2) that the court be closed to all publicity
- 3) that it include juvenile cases in its scope
- 4) that it not be instituted with the adversary process in mind
- 5) that the Official Guardian be replaced by a court-appointed official at less cost

Insofar as Maintenance is concerned, 40 out of 220 touched on this subject. This total includes 25 laypersons, 6 social agencies, 3 judges, 5 lawyers, 1 academic. Approximately 90% thought that the enforcement of maintenance orders be guaranteed either by:

- 1) garnishee of wages
- 2) court have full power to enforce maintenance orders
- 3) defaulters charged under Criminal Code
- 4) Government agency to enforce orders

A great number of letters expressed the concern that the custody laws should be made to benefit the interest of the child first and foremost.

The last subject of concern was family property. Only 14 letters touched on this subject: 7 of which were from laypersons, 3 from social agencies, 2 academics, 1 lawyer and 1 member of Parliament. Almost all thought that matrimonial property should be divided equally with the debts being shared equally as well. One person was of the opinion that lawyers should not be involved in the division of property.

The foregoing is a summary of the different topics using the headings which apply to the four Working Papers on Family Law. There were, however, some comments which expressed a need for research in other areas of law which were properly felt to be within the scope of family law.

These suggestions were:

- 1) criminal implications in family law (re: battered children)
- 2) abortion
- 3) illegitimacy
- 4) Child Welfare Act
- 5) Rights of Native People
- 6) Alienated Youths
- 7) Adoption Act
- 8) rights of fathers in paternity suits

EXPLANATION OF CODES

1) FC Family Court

FC-1 First letter received on Family Court

FP Family Property

M Maintenance

D Divorce

2) The reader will note that in some letters a reference is made to another letter. This means that the person in question commented on two or more of the subject areas. For example:

"FC-3 (see D-4 Steinberg)"

simply means that the person named "Steinberg" commented on both Divorce and on the Family Court. This method was the simplest cross-reference that could be devised.

1. Family Court

FC-1 (see D-2 Walsh)
- one single court for family matters

FC-2 Judge G.F. Smith (Jan. 24/72)
- in favour of one single court for all family matters

FC-3 (see D-4 Steinberg)
- feels one court for all family problems is necessary

FC-4 Mr. Justice H. MacDonald (Feb. 1/72)
- favours one court having jurisdiction over all family matters at county or district level

FC-5 Mr. E. Houston (Lawyer) (Jan. 27/72)
- favours unification of family courts
- suggests a support service system available directly within the court

FC-6 Judge K.F. Arkell (Jan 31/72)
- favours unified family court at a provincial level

FC-7 Manitoba Law Reform Commission (Jan.31/72)
- suggest the unification of all family matters in one single court

FC-8 (see D-5 Griesback)
- would like to see one system throughout Canada with uniform rules for each province

FC-9 (see FP-2 Roberts)
-would like the courts to handle all family matters especially the enforcement of maintenance orders

FC-10 Judge J.L. Dubinsky (Feb. 10/72)
- opposed to a Family Court system for divorce cases
- suggests that family court judges be trained in family law
- strongly feels family court judges not capable of handling serious matters such as divorce

FC-11 Mr. E. Houston (Lawyer) (Feb. 7/72)
- (see also D-9)
- in favour of one court for all family matters equipped with proper support services

FC-12 Law Reform Commission of B.C. (Feb. 8/72)
- in favour of a Unified Family Court with Comprehensive jurisdiction over all family matters

FC-13 Judge F.J. Cornish (Feb. 14/72)
- in favour of the Unified Family Courts

FC-14 (see D-11 Cowan)
- in favour of unified family court
- feels that such a court would be more sympathetic towards family problems

FC-15 Canadian Home and School and Parent-Teacher Federation (Feb. 24/72)
(see also M-4, D-12, FP-2)
- interested in unification of family law matters under one court
*- expressed an interest in all matters contained in our summary of study in Family Law

FC-16 (see D-13 Hurley)
- in favour of Unification of Family Court to include i) custody iv) adoption
ii) wardship v) rights of spouses
iii) maintenance

FC-17 Mr. Justice Walsh (Jan. 31/72)
- does not favour unification
- feels that marriage and divorce should properly be returned to the provinces

FC-18 (see D-14 Tyrwhitt Drake)
- does not see need for family courts under federal jurisdiction

FC-19 M. Dolment (layperson) (Mar. 1/72)
(see also M-5, FP-4, D-15)
- would like a central justice system for all marital problems
- would like the court closed to all publicity

FC-20 (see *D-16 Salvation Army)

FC-21 Corporation des Psychologues (Que) (March 13/72)
- would favour a unified family court to include juvenile cases

FC-22 (see D-17 McCleave)
- something should be done about the jurisdiction of the courts

FC-23 Barreau de Quebec (lawyer) (March 22, 1972)
- would like to see a unified family court system throughout Canada

FC-24 Conférence Catholique Canadienne
(see also O-4)
- family court system established as soon as possible

FC-25 (see D-19 MacGill)
- family matters under one jurisdiction

FC-26 (see D-24 Simpson)
- would like lawyers to be trained in social work for a new court system

FC-27 (see D-26 Chabot)
- would prefer family matters to be strictly in camera

FC-28 Mr. R.H. Radomski (layperson) (June 23/72)
- would favour a unified family court in order to lessen the difficulties of fragmented jurisdiction

FC-29 (see M-14 Morrow)
- something should be done about fragmentation of jurisdiction

FC-30 (see M-19 Coombs)
- would like to see family services active within the court system and under federal jurisdiction

FC-31 (see D-31 Hucke)
- favours support services within court
- uniformity in rules of court

FC- 32 Ross B. Linton (lawyer) Nov. 8/72
- representation of children in divorce
and criminal cases to form part of family
court system

FC-33 Eunice M. Scammell (layperson) (Dec. 27/72)
- uniformity in the courts

FC-34 D. C. Hodgkinson (layperson) (Nov. 25/72)
(see also D-33)

- would like support services attached to
family court in order to "repair" marriages
instead of "destroying" them

FC-35 C. Hodgkinson (layperson) (Feb. 2/73)
(see also D-38)

- take out adversary system from family
court

FC-36 Halton County Family Counselling Services
(Mar 1/73)
(see also D-40, M-22, FP-10)

- would favour unified family courts

FC-37 (see D-42 Ass. F.C. Sherbrooke)
- unification of family matters in one court
- closed court for all matters re: family

FC-38 (see D-44 Smith)
- court-appointed psychiatrist should handle
reports instead of Official Guardian

FC-39 Petition by 74 (laypersons)

- family court hearings to be closed doors

FC-40 Executive of Parents Without Partners (layperson)
petition of 22 persons

- family court hearings should be closed to
publicity

FC-41 Joan Saxton (layperson) May 25/73
(see also D-45, M-29)

- conciliation services within the family
court system
-discretionary powers for judges to grant
divorce

FC-42 M. Weber (layperson) (July 3/73)
- would like to see uniformity in family courts throughout Canada

FC-43 Interdisciplinary Study Group on Family Law

- would like the creation of a Conference Officer (Conciliation Officers) within family courts

FC-44 Miss L. Leury (layperson) (June 20/74)

- would like family courts to be more compassionate in dealing with family matters

FC-45 B. Doran (lawyer) (Oct. 19/72)
(see also D-54)

- of the opinion that family matters should take priority over all court matters and therefore a court should be established wherein family matters would be dealt with in the important way they should

FC-46 C.K. Toren (Social Service West Vancouver) (Oct 20/72)
- pleased with our proposed unified family court but would like preventive services attached to it

FC-47 P. Power (lawyer) (Oct. 23/72)
- would recommend a new system but definitely not under Provincial jurisdiction

FC-48 H. Matthews (lawyer) (Oct. 23/72)
- feels the courtroom is not the place for family law problems
- if the community was more aware of "marriage" it would help a great deal

FC-49 M.A. Prahbu (lawyer) (Oct. 24/72)
- feels that legislative powers should be re-examined

FC-50 Judge B. Guss (Oct. 24/73)

- in favour of a family court under Federal jurisdiction

FC-51 F. Muldoon (Law Reform Commission Manitoba) (Oct. 23/72)
- constitutional problems should be looked into carefully

FC-52 D. Best (student-at-law) (Oct. 31/72)
- jurisdiction for divorce should not change from province to province

FC-53 (see D-56 Hattersley)
- conflicting jurisdictions should be remedied
- reconciliation services inadequate

FC-54 Family Counselling Service (Nov. 14/73)
(see M-37)
- would favour a family court setting where all family matters could be dealt with together
- suggests good support services attached to it

FC-55 W. Lang (lawyer) (Nov. 21/72)
(see also D-57, O-19, M-38, FP-14)
- urgent need for family court with an integrated jurisdiction because of the high mobility of people in today's society
- marriage counselling services should be attached to the family court

FC-56 H. Popkin (layperson) (Sept. 10/75)
- a family court should be established to take care of all family matters
- counselling should be such that discussion of marital breakdown is carefully considered before trial

2. Family Property

FP-1 Prof. M. Rive-Beausoleil (Feb.1/72)
(see also D-6)
- would like to see more equality in the division of property

FP-2 John Roberts MP. (Feb. 1/72)
(see also FC-9)
- would like to see changes in present financial settlements

FP-3 (See *FC-15 CHSPTF)

FP-4 (see FC-19 Dolment)
- would like question such as : is the mother a good teacher and has she taken care of the home asked when considering property settlements

FP-5 (see*D-16 Salvation ARmy)

FP-6 Juliette Hébert (layperson) (Feb. 15/72)
- does not feel lawyers should be involved in the separation of property

FP-7 (see D-19 MacGill)
- would like to see property settlements that recognize concept of equal partnership of spouse in marriage

FP-8 (see M-15 Newman)
- feels all property should be liquidated and divided before divorce is granted

FP-9 E.H. Hodgins (layperson) Feb.5/73
(see also D-39)
- put "community property" provisions in divorce settlements

FP-10 (see FC-35 Halton)
- equality in division of property

FP-11 No name (layperson)
- equality in division of property

FP-12 (see D-49 McBride)
- division of property should be equal (including sharing of debts)

FP-13 Prof. Peter Rastall (March 20/75)
- the pooling of family property should
depend upon how long the couple lived together

FP-14 (see FC-55 Lang)
- division of property should be on an equal
footing

3. Maintenance on Divorce

M-1 (see D-4 Steinberg)
- archaic laws regarding alimony
(according to the Law of England of 1895)
should be drastically changed to meet
today's society

M-2 (see D-11 Cowan)
- maintenance and custody of children are
high on the list of priorities for study

M-3 (see*FC-15 CHSPTF)

M-4 (see D-13 Hurley)
- would like some changes made in maintenance
orders for children and divorcing spouses

M-5 (see FC-19 Dolment)
- feels maintenance orders should be controlled
by government agencies with regard to
collecting from defaulting spouse

M-6 (see*D-16 Salvation Army)

M-7 Mrs. R. Davidson (layperson) (March 27/72)
- feels maintenance laws unjust when a man
has to pay for the rest of his life for one
mistake
- feels a two-year period for the wife to
re-establish herself should be sufficient

M-8 (see D-19 MacGill)
- would like the educational needs of
children considered in maintenance orders
- elimination of maximum amounts for
maintenance

M-9 (see D-21 Hebert)
- would like maintenance orders to be
guaranteed

M-10 N. Rotstein (layperson) (Feb. 22/73)
- would like the court to handle the
enforcement of maintenance orders

M-11 (see D-22 Shaw)
- would like more fairness to fathers when visiting rights are ordered (re: wife not letting him see the children)

M-12 Mrs. M. Stephenson (Layperson) (June 22/72)
- feels the custody of the child should be shared equally

M-13 Mrs. J. Ford (layperson) (June 24/73)
- feels maintenance orders should be taken directly from husband's salary (garnishee wages)

M-14 Judge W. Morrow (June 28/72)
(see also FC-29)

- feels the court should be granted power to enforce maintenance orders

M-15 Mrs. E. Newman (Layperson) (July 17/72)
(see also FP-8)

- feels all maintenance and property settlements should be made before divorce is granted

M-16 Mr. S.R. Rhodes (layperson) (July 24/72)
- does not see the need for maintenance awards to spouse after the equal division of property

M-17 Mr. Ed. Houston (lawyer) (Aug. 30/72)

- maintenance orders should be enforced by applying a garnishee to wages

M-18 Mr. G. Saddlemire (layperson) (July 31/72)
- feels maintenance and custody laws bias
- lean on woman's rights and forgets man's

M-19 Mme. B. Coombs (layperson) (Sept. 8/72)

(see also FC-30)

- would like enforced maintenance ordered through court

M-20 G. Lawson (layperson) (Nov. 16/72)
- would like the maintenance of children re-assessed

M-21 W. Brisebois (layperson) (Feb. 9/73)
- custody laws to be fair for all concerned
- maintenance to be more realistic

M-22 (see FC-36 Halton)

- maintenance order guaranteed by applying garnishee to wages
- custody granted upon merits (not simply to mother)

M-23 (see D-43 Sherbrooke)

- maintenance orders enforced by way of making defaulter charged under the Criminal Code

M-24 K. Scott (layperson) (March 27/73)

- defaulters of maintenance orders be tried and convicted under Criminal Code

M-25 Judge N. Primerose (May 11/73)

- feels maintenance orders should be a claim on the deceased's estate

M-26 M. Stonier (layperson) (May 17/73)

- custody of children laws should be uniform
- when custody is denied to one party he should not be able to remove those children to another province and get custody there

M-27 (see D-44 Smith)

- maintenance and custody orders unfair to men

M-28 M Parent (layperson) (June 8/73)

- enforcement of maintenance orders in same way as Income Tax

M-29 (see FC-41 Saxton)

- maintenance award at decree nisi should be held "in trust" and interest added on until decree absolute
- maintenance orders should come under review periodically

M-30 Single Fathers Ass. (Layperson) (Oct. 9/73)

- "Deserted Wives and Children's Maintenance Act" discriminatory

M-31 (see D-49 McBride)

- maintenance of children should be a joint responsibility and fault should be irrelevant

M-32 J. Beeby (layperson) (May 13/74)

- maintenance awards should be reviewed periodically taking into account whether wife is working and whether husband's salary increased

M-33 J. Wright (layperson) (May 24/73)
- feels that maintenance and custody of children to mother 90% of time as unfair to men

M-34 (see D-53 Trites)
- maintenance to children should be enforced (in writing before the case is brought to court)

M-35 (see D-55 den Ouden)
- maintenance support for children should stop at the age of majority in the province

M-36 (see D-56 Hattersley)
- does not feel collorary relief should be under Divorce Act

M-37 (see Family Counselling Service)
- maintenance for children should be scrutinized to ensure the interest of the children

M-38 (see FC-55 Lang)
- maintenance & custody of children should be carefully assessed

M-39 Mr. Lajoie (layperson) (April 24/72)
- feels maintenance orders too strict
- Mr. L. was put in jail for non-payment

M-40 (see FC-7 MLRC)
- suggests enforcement of maintenance orders be dealt with through social ins. records and Income Tax records (a way to track down the defaulters)

4. Divorce

D-1 Parents Without Partners, Divorce Committee (Hamilton) (Jan 20/72)
- fair divorce laws for both parties
- put an end to legal contest between lawyers

D-2 Judge A. Walsh (Jan. 25/72)
(see also FC-1)

- recognition of foreign divorce and nullity decrees
- jurisdiction to grant divorce

D-3 Mr. Justice G.S. Hart (Jan. 24/72)
- need for a form of default judgment in uncontested cases

D-4 Judge D.M. Steinberg (Jan. 26/72)
(see also FC-3, M-1)

- feels the divorce laws should be changed whereby either husband or wife can have custody of children rather than the custody almost always being granted to wife

D-5 Floyd F. Griesback (layperson) (Jan. 31/72)
(see also FC-8)

- divorce laws not in keeping with changing society

D-6 (see FP-1 Beausoleil)
- feels there is a much needed change in our divorce laws

D-7 Government of Yukon Territories (Feb. 1/72)
- recognition of foreign divorces with respect to customs of native people

D-8 Deputy Minister of National Defense
- recognition of foreign divorces with special concern to members of the armed forces

D-9 (see FC-11 Houston)
- see changes in Divorce Act dealing with corollary relief
- wording of the Divorce Act should be explicit
- custody of children under the Divorce Act

D-10 Prof. Ian Baxter (Feb. 8/72)
- jurisdiction to grant divorce
- recognition of foreign divorces and nullity decrees
- study 1968 Divorce Act with a view to amending out-moded grounds

D-11 Judge Gordon Cowan (Feb. 14/72)
(see also FC-14, M-2)
- high cost of divorces (priority)

D-12 (see *FC-15 Can. Home and School and Parent Federation)

D-13 Professor D. M. Hurley (Feb. 24/72)
(see also FC-16, M-4)
- would like present divorce procedures simplified
- recognition of foreign divorces

D-14 Judge M.L. Tyrwhitt-Drake Feb. 28, 72
(see also FC-18)
- would like marriage breakdown as sole grounds for divorce

D-15 (see FC-19 Dolment)
- would like our Divorce laws less complicated

D-16 The Salvation Army (Mar. 7/72)
(see also FC-20, M-6, FP-5)
- would like the Divorce Act look into
*expressed an interest in all related matters

D-17 R.J. McLeave MP. (March 13/72)
(see also FC-22)
- feels the grounds for divorce should be cut from 5-3 years to 4-1 years.

D-18 J. Smith (Layperson) (March 23/72)
- would like the recognition of foreign divorces

D-19 E.G. MacGill (layperson) March 30/72
(see also FC-25, M-8, FP-7, O-5)
- favours divorce after 1 year's separation
- separate domicile for married women
- would like a mimimum age for valid marriage in the Divorce Act

D-20 Mr. Cox (layperson) (March 28/72)
- wishes divorces could be less costly

D-21 J. Hebert (layperson) (Aprial 26/72)
(see also M-9)

- feels there is an urgent need to amend the divorce laws

D-22 Ms. C. Shaw (layperson) (May 24/72)
(see also S- 11)

- feels divorce laws should be less complicated
- does not understand the automatic custody to mother

D-23 Interested parties (laypersons) (May 25/72)
- would like the Divorce Act to oblige confidential evidence (i.e. ministers, doctors)

D-24 L. Simpson (layperson) (May 30/72)
(see also FC-26)

- would like the language of the Divorce Act made simple
- would like Divorce to be sole on the grounds of marriage breakdown

D-25 D. Warner (Layperson) (May 30/72)

- would like to see marriage contracts
- short-term separation and instant divorce where no children are involved and parties are of mutual agreement

D-26 M.L.A. Chabot (layperson) (June 1/72)
(see also FC-27)

- laws and procedures simplified uncontested divorces to proceed on their own without the involvement of lawyers

D-27 L. Henderson (law student)

- feels that divorces should only be granted under the grounds of cruelty
- "it is too easy to ge a divorce now"

D-28 John Mill (layperson) (July 12/72)
- feels the laws on divorce and related matters should be simplified and outlined in a booklet in order to educate people on the laws

D-29 Winnipeg Council of Self-Help Groups (July 14/72)
- this is a group of woman (divorced) who
studied the process and has been able to
simplify the procedure to allow person to act
on their own behalf at a cost of \$75.00
- suggest more of this or change laws to bring
court cost to a minimum

D-30 W. J. Hemmerick (lawyer) (July 27/72)
- where possible divorce should not be a trial
matter but handled in the administrative
process (i.e. Chines Divorce laws) This would
eliminate the high cost of divorce)
- where divorce cases must go to trial it
should be kept at a minimum cost

D-31 S. Hucke (layperson) (Oct. 13/72)
(see also FC-31)

- recognition of foreign divorces
- lower cost of divorce
- marital breakdown as grounds for divorce
and instant divorce where no children
and parties mutually agree
- would like the "fault issue" out of
the Divorce Act

D-32 K. Anderson (layperson) (Dec. 18/72)

- would like marital breakdown as sole grounds
for divorce
- where parties agree instant divorce

D-33 (see FC-34 Hodgkinson)
- would like to see legislation to cut legal
fees to a minimum

D-34 Mrs. Dallinger (layperson) (Dec. 20/72)
- divorce on demand
- 1 year separation if children are involved

D-35 Penny Manuel (Layperson) (Dec. 21/72)
- shorten separation to one year

D-36 R. Graham (layperson) (Jan. 3/73)
- shorten separation ground to one year
- lower the cost of divorce

D-37 W.J. Hemmerick (lawyer) (Jan.19/73)
- decree absolute at hearing for uncontested
divorces
- feels judges should review the files not
registrar

D-38 M. Pare (layperson) (Feb. 4/73)
- shorten period of separation (six months)

D-39 (see FP-9 Hodgins)
- divorce on demand

D-40 (see FC-37 Halton)
- legislation minimizing costs of divorce

D-41 C. Anderson (layperson) (March 19/73)
- divorce after one year's separation
- marriage breakdown as sole cause
- low cost divorces

D-42 Ass. des Femmes Chefs de Famille de Sherbrooke
(Apr. 5/73)
(see also M-23, FC-36)

- elimination of adultery as grounds for divorce
- recognition of foreign divorces
- recognition of legalized separations from
one province to another

D-43 O. Ternouski (layperson) May 21/73)
- low cost divorce

D-44 Owen J.R. Smith (lawyer) (June 1/73)
(see also M-27, FC-38)

- favours "no fault" divorce
- divorce granted after six months separation

D-45 (see FC-41 Saxton)
- does not feel the misconduct of one party
should be entered as grounds for divorce --
marriage breakdown only cause

D-46 J. O'Drane (layperson) (Junel9/73)
- divorce after one year separation

D-47 Congregation Machzikee Hadas (Jewish) (Nov. 22/73)
- more liberal divorce laws would lower divorce
rate in Canada

D-48 J. Moody (layperson) (Sept. 7/73)
- divorce after one year separation

D-49 R. McBride (layperson) (May 2/74)
(see also M-31, FP-12)

- no fault divorce - marriage breakdown sole
cause for divorce
- six months period with consent (with judicial
leave to shorten time)

D-49
cont'd - or one year separation where children are involved
 - legal costs of divorce should be lowered

D-50 J. Shivas (lawyer) (May 16/74)
 - would like the Divorce Act to permit marriages between a man and the sister of his divorced wife during her lifetime or between a woman and the brother of her divorced husband during his lifetime

D-51 V. Moody (layperson)
 - low cost for divorces

D-52 Mme. L. Ouellet (layperson) (May 7/75)
(see also 1-95)

 - separation grounds in divorce should be shorten to 1 year

D-53 C. Trites (layperson) (June 4/75)
(see also 1-96) (see also M-34)

 - separation grounds should be shortened

D-54 (see FC-45 Doran)
 - costs of divorce should be lowered so that the poor man can afford a good lawyer

D-55 J.L. den Ouden (lawyer) (Oct. 26/72)
(see also M-35)

 - corollary relief should be granted at any time before or after the Decree Nisi
 - evidence of adultery - archaic should be abolished
 - separation grounds should be shortened
 - costs of Official Guardian reports too high
 - where government intervenes (re: welfare) and spouse transfers maintenance payments to Government she should not be taxed

D-56 J.M. Hattersley (lawyer) (Nov. 2/72)
(see also FC-53, M-36)

 - time between Decree Nisi and decree absolute should be shortened to one month

D-57 (see FC-55 Lang)
 - waiting period should be one year for separation ground
 - cost of divorce should be reduced

D- 58 Judge J. Van Duzer (July 23/73)
- grounds for marital breakdown should
be added to Divorce Act.

D-59 Miss Patsy George (layperson),
- would like to see "no fault divorce"
brought to Canada

D-60 (see 1-114 Robertson) (layperson)
- favours "no fault" divorce or at
least a shorter separation ground

D-61 Mrs. J. Bender (layperson) March 13, 1973
- feels that custody laws in divorce cases
should be changed to benefit the children's
interest primarily

D-62 Mr. M.P. Dalseg (layperson) May 4, 1973
- lawyers fees should be cut to a minimum
- if divorce laws were more simple, lawyers
would not be needed

D-63 Mr. A. Aulsebrook, (layperson) September 20, 1973
- custody of children in divorce cases should
not always go to the mother of the children

D-64 Parents Without Partners January 20, 1973
- put an end to the legal contest between
lawyers
- make divorce laws fair to both parties

D-65 Judge McNichol Sanders, February 21, 1973
- recognition of foreign decrees
- educate the public on divorce laws

D-66 Federated Women's Institutes of Canada
- laws should be made simpler

D-67 Ms. Crawford, (layperson) January 20, 1973
- would like the divorce laws changed to
enable women to change their names automatically

D-68 Mr. E. Dudley, January 20, 1973 (layperson)
- fairer custody laws for men
(re: visiting rights)

D-69 Mrs. M. Gloude, (layperson) January 24, 1973
- feels those at fault should have to
pay the greater cost in divorce actions

D-70 Mr. H.F. Summertan, January 22, 1973 (layperson)
- shorter separation grounds
- no waiting period between decree nisi and
decree absolute

D-71 Mrs. M. Watson, (layperson) January 22, 1973
- maintenance of children should be dealt with
primarily

D-72 Mrs. A Herlowitch, (layperson) January 24, 1973
- shorter separation grounds for divorce

D-73 Mr. E.J. Finch, (layperson) January 25, 1973
- would like the grounds for divorce to include
"incureables"
- divorce should also be "on demand" when the
two parties agree

D-74 Mr. L. Keller, (layperson) January 30, 1973
- "no fault divorce"
- instant divorce where no children are
involved

D-75 No name
- custody laws should be amended to allow
fathers the custody of the children
- lower cost for divorces
- shorter separation period

D-76 Ms. Martha Ferguson, (layperson) February 4, 1973
- divorced women should be allowed to get credit
without husband

D-77 Mr. R. Shrigley, (Layperson) February 5, 1973
- divorce should not be considered as
unimportant matters to judges
- time between application and hearing should be
shortened
- costs should be brought to a minimum

D-78 Mrs. J. Sperry, (layperson) February 20th, 1973
- divorce on demand for those with
no children
- lower court costs

D-79 Mr. J.J. Paulbiski, (layperson) January 21, 1973
- divorce too costly

D-80 Mr. C. Bradash, (layperson) January 20th, 1974
- divorce too costly for middle income groups

D-81 Ms. E. Kerucy, (Layperson), February 20, 1974
- fairer custody laws for men

D-82 Mrs. A. Andres, (layperson) March 4, 1974
- would like to see the cost of divorce lowered

D-83 Ms. June Beeby, (layperson) May 13, 1974
- feels that women are discriminated against in divorce actions

D-84 Dr. Griffith Binning, (academic) May 15, 1974
- would like to see a change in the custody laws involving divorced parents
- children's interest should be the first important aspect of divorce settlements

D-85 Cpl. D.N. Noseworthy, (layperson) May 19th, 1974
- lawyers fees in divorce cases should be brought to a minimum

D-86 Mrs. G. Smith, (layperson) February 20, 1974
- "no fault" divorce
- divorce on demand where no children are involved

D-87 Mrs. B. Wilcox, (layperson) August 15, 1974
- would like to see children's rights in divorce made the first issue of study

D-88 Mrs. C. Price, (layperson) September 28, 1974
- "no fault" divorce - marriage breakdown sole grounds for divorce

D-89 Ms. Nancy Lucas, (layperson)
- would like to see "marriage breakdown" as sole cause for divorce
- divorce "on demand" for those without children

D-90 Mr. Miron Balych, (layperson) March 25, 1975
- would like the Law Reform Commission to finally take a stand on "no fault" divorce

D-91 No name
- finds divorce laws too lenient

D-92 Mr. N. Gifford, (layperson) May 6th, 1975
- would like to see more equality in custody
laws for men

D-93 Mr. J. Stark, (layperson) August 19, 1975
- divorce should be granted immediately
where both spouses agree

D-94 Mr. Bryan Clarke, (layperson) August 30th, 1975
- divorce laws should be made easier
- suggests divorce "on demand" where no
children are involved and a reasonable waiting
period when children are involved

5. Other

O-1 Dep. Minister National Health and Welfare (March 2/72)
- would like that part of family law which is slanted towards criminal law be dealt with by our project re: battered children

O-2 Ontario Psychiatric Association
- the psychiatric ass. feels that if judges continue to read openly psychiatric reports to the family and juveniles it will seriously restrict the extent of the psychiatric reports

O-3 Anonymous
- rights of unwed mothers should be looked into

O-4 (see FC-24 Conférence Catholique Canadienne)
- would like to see "abortion out of Criminal Code"

O-5 (see D-19 McGill)
- status of adopted children
- legal aid looked into

O-6 Frances Porteous (April 7/72)
- need for new legislation with regard to illegitimate children

O-7 Glen Lawson (Children's Aid Society) (May 72)
- would like adopting parents and children to have equal rights under the law

O-8 Philippe Garigue (professor) Oct 12/72
- would like the marriage act re-drafted to include marriages other than "conjugal"

O-9 Children's Aid Society
- review the Child Welfare Act

O-10 Hazel Scott (layperson) (Feb. 16/72)
- law should be enacted whereby a divorced or separated woman can participate in the Canada Pension Plan

O-11 Ms. C.D. Busing (law student) (March 12/73)
- legality of common-law marriages

O-12 Mrs. A. Gaspari (layperson) Mar. 13/73)
- would like to see a change in the adoption laws

O-13 Conference of Uniformity of Legislation (March 15/73)
- adopted children should have all rights

O-14 Mrs. B. Riseborough (prosecutor) (Apr. 27/73)
- battered children and juvenile delinquency Act reviewed

O-15 Petition signed by 17 (law students)
paternity laws discriminatory
- fathers have no rights at all

O-16 Rowe (layperson) June 25/74)
- legal rights for illegitimate children

O-17 (see FC-50 Guss)
- juvenile delinquency Act and alienated youth Acts should be prior concern

O-18 J. McComisky (lawyer) (Nov. 12/72)
- feels academics should get help of practicing lawyers before initiating recommendations

O-19 (see FC-50 Lang)
- would like the rights of Native people re: divorce looked into)

P A R T II

FAMILY COURT

WORKING PAPER #1

In all, 187 comments were received from the various groups outlined in the attached Chart. Included in the total was the response received from 65 judges (throughout Canada) to a questionnaire which was drawn up for the Law Reform Commission by Judge David M. Steinberg. For a more detailed evaluation of the questionnaire, see Judge Steinberg's report, "Drafting of a Model Unified Family Court Legislation" dated June 6, 1973. At the start of his report, Judge Steinberg explains the gap between the 1,153 questionnaires sent and the 65 written responses. Because most judges attended special committees which were examining the question of a unified family court, and because of the fact that their views were made known in the subsequent reports of those committees, a great majority of judges felt there was no need to answer the questionnaire. The details of these reports are also found in Judge Steinberg's report.

As Judge Steinberg's report is very detailed, it was thought unnecessary to duplicate his findings here and therefore only a short summary of those letters received have been made part of this report.

All but eight of the total opinions expressed favoured a unified family court system in Canada. However, most of the letters and briefs received had negative reactions to

some of our recommendations. These were as follows:

- 1) eleven persons felt that juveniles cases should properly come under the jurisdiction of a family court
- 2) five were of the opinion that the court should remain closed
- 3) four did not agree with the presumption that judges should first be lawyers - many (including social workers) thought that social workers could be best suited to become family court judges
- 4) four thought that alimony payments should be handled by a government agency
- 5) three thought the court should be at a county court level
- 6) two Church groups were not pleased that the role of the Church in respect to social services was overlooked
- 7) two thought that judges and lawyers should be trained in the behavioural sciences
- 8) two thought the cost to the taxpayer might be too high
- 9) two thought that other social groups such as commune marriages, marriages between homosexuals should be recognized in such a court
- 10) two thought that the social services should be directly attached to the court
- 11) a brief presented by the Family Court of New Brunswick thought that the adversary process should be maintained but in a modified way
- 12) paper holds false hope with respect to court-enforced maintenance orders
- 13) paper should have examined the philosophical aspects of a unified family court
- 14) pre-marital counselling should have been given more thought
- 15) some felt that the legal aid system should be looked into- they felt that it does not provide the best man for the job
- 16) felt greater concentration on the conciliation services

- 17) suggest legal aid officers at the location of the court
- 18) felt language incomprehensible
- 19) do not endorse "public defender"
- 20) a psychiatrist suggested that criminally related matters be within the scope of a unified family court (re: incest, child abuse, child battering etc.)
- 21) a judge felt that interpreters should be available on request
- 22) a lawyer did not feel that the Commission had enough authority supporting the paper
- 23) more attention should have been given to the interest of children
- 24) not in favour of "databank" - feels an invasion of privacy
- 25) some felt that counselling should not be made mandatory
- 26) counselling services should remain outside the court
- 27) reports should not be accessible to all and parties should not have the right to question the validity of such reports
- 28) simplification of laws
- 29) a psychiatrist did not feel that psychiatrists should be attached to the court

EXPLANATION OF CODES

1. In the detailed analysis of each letter, the first number signifies the number of the Working Paper (i.e. 1-1 is Working Paper #1 (Family Court) and the next number after the dash simply serves for enumerating the letters
2. When the letter (L) appears before the name, it signifies that the comment was in letter form.

When the letter (B) appears before the name, it signifies that the comment was in a brief form

3. Meaning of Group Identification:

Gen. P.	- General Public
Ass.	- Associations including Family Service Centers, Social Workers, Children's Aid Societies, etc
M.P.	- Member of Parliament
Academic	- includes professionals other than lawyers
Govt.	- Government departments including Law Reform Bodies
Women	- Women's groups
Psy.	- Psychiatrists

Others are self-explanatory

FAMILY COURT

WORKING PAPER # 1

SUMMARY CHART

	Favourable	Unfavourable	TOTAL
Editorials	27	2	29
Letters & Briefs	91	2	93
Answers to Steinberg's Questionnaire	58	4 3 with no opinion	65
TOTALS	179	8	187

FAMILY COURT
WORKING PAPER # 1

CHART

GROUP	FAVOURABLE	UNFAVOURABLE	TOTAL
General Public	35	-	35
Associations: Family services and social workers	22	1	23
Lawyers	9	1	10
Judges	8	-	8
Academics	5	-	5
Church groups	3	-	3
Psychiatrists	3	-	3
Government Departments including Law Reform Commission	3	-	3
Women's Groups	2	-	2
Members of Parliament	1	-	1
<u>TOTALS</u>	91	2	93

ANSWERS TO STEINBERG'S QUESTIONNAIRE

In response to questions 1, 2 and 3 only:
(see Appendix "A" attached)

1. Supreme Court Judges:

19 responses
11 affirmatives
5 negatives
3 no opinion

It should also be noted that out of the 5 negative replies,
3 were from the Quebec Superior Court

2. County Court Judges:

16 responses
16 affirmatives

3. Provincial Court Judges:

(including judges of the Social Welfare Courts in Quebec)

29 responses
28 affirmatives
1 negative

Those favouring jurisdiction at a Superior Court Level:

7 judges 2 from British Columbia
 2 from Ontario
 1 from Alberta
 2 from Quebec

Those favouring jurisdiction at an Inferior Court Level:

7 judges 3 from British Columbia
 2 from Ontario
 1 Saskatchewan
 1 from Quebec

* Question 1, 2, and 3 were the only questions relevant to the unified Family Court paper. The other questions were to seek information as to how (in the opinion of the judges) a family court would work in their jurisdiction.

FAMILY COURT WORKING PAPER #1

COMMENTS

Editorials

1-1 Canadian Welfare - Ottawa, May 75
simply an informative editorial stating the follow-up pilot projects recommended in the Working Paper
- favourable to the paper and its recent pilot project

1-2 Toronto Star - February 27 74
- the article is largely in favour of our paper but states that it simply reaffirms what has been said many times before
- the editor seems to think that the paper holds out a false hope with respect to court-enforced maintenance orders

1-3 Globe & Mail - March 7, 1974
- very favourable but thought that the Commission should have considered examining family court philosophy

1-4 Globe & Mail (John Beaufoy) February 26, 1974
- favourable and fairly accurate account of the paper

1-5 Globe & Mail (John Beaufoy) February 26, 1974
- in favour but underlines the cost to taxpayer

1-6 Advocate Red Deer Alberta March 2, 1974
- extremely favourable

1-7 Guardian, March 13, 1974
- favourable account but one added spice is that the paper entitles its article "ask yourself" and, at the end of the article urges the readers to comment

1-8 Expositor, Brantford, Ont. February 27, 1974
- extremely favourable long time needed programme

1-9 not legible
- gives a favourable account of our recommendations in conjunction with those of the Ontario Law Reform Commission

1-10 Journal - Edmonton, Alberta (June Sheppard) May 28/74
- article is favourable and has a woman's touch to it
- it dwells on the conciliation part of the paper

1-11 Times - Oshawa, Ontario June 19, 1974
- the article praises the paper but deals mainly with the ACSW's recommendation of establishing a Maintenance Award Fund

1-12 The Times News, Thunder Bay, April 10, 1974
- article calls paper "thought provoking"

1-13 Don Sellar - Nugget, North Bay, April 18, 1974
- quite favourable on the unification of family courts

1-14 Gazette Sarnia, Ontario March 13, 1974
- in agreement with paper but felt that it should have had some comments about what goes on before marriage
- the article suggests more pre-marital counselling

1-15 Vancouver Sun, March 9, 1974
- favourable account of the paper

1-16 Spectator Hamilton, March 11, 1974
- excellent article calls paper "thought provoking"

1-17 Beacon-Herald, Stratford, April 23, 1974
- very good account of paper including the views of the Vanier Institute where it suggests the new court services recommended by the Working Paper would prolong things and create more difficulties

1-18 Observer (Bud Cullen) Sarnia, Ont. April 17, 1974
- the editor is a member of parliament who is strongly in favour of family courts coming under the federal jurisdiction and therefore he fully agrees with the Working Paper

1-19 Journal Ottawa, Ont. February 25, 1975
- favourable report on the follow-up pilot projects establish in conjunction with recommendations made in our Working Paper

1-20 Trentonian - August 30, 1974
- this editorial deals mainly with persons and groups who are not in favour of a unified Family Court
(1) the Vanier Institute of the Family feels that if courts were more humane, family courts would not be needed
(2) they do not agree in making family courts a division of the Supreme Court
- they seem to think this will bring things further away from the community

1-21 Editorial - Le Droit Ottawa July 8, 1974
- this is part of a series of articles written concerning marriage rights
- in this particular article the author favourably refers to the Working Paper as a document on which a number of points raised in this and previous articles are being considered

1-22 Le Jour - Ville St. Laurent P.Q. November 23, 1974
- favourable report

1-23 La Tribune - Sherbrooke
- very favourable report stating the "Centre d'Action Familiale de Sherbrooke" opinions and comments on the Working Paper
- they seem to agree on all points and suggest that our proposals be implemented as soon as possible

1-24 Le Nouvelliste - Trois Rivières January 23, 1975
- this article gave an account of M. Chrétien's presentation of the paper at the "Club des femmes de carrières de Shawinigan" who received the paper very well

1-25 Le Devoir, Montreal, February 25, 1975
- the article favours our paper and suggests that the province of Quebec should initiate some of the recommendations contained therein

1-26 Le Nouvelliste Trois Rivières, April, 1975
- this article mentioned the OFAQ's consensus with our recommendations

1-27 Le Droit Ottawa, March 4, 1975
- this article stresses the importance of a unified family court in all provinces

1-28 La Presse, Montreal, March 4, 1975
- this article favours all our recommendations with the exception of one
- the author does not agree that the court be at the Supreme Court level

1-29 La Tribune, Sherbrooke, April 23, 1975
- favourable article of paper based on "Centre d'action Familiale" view

Letters & Briefs

1-30 Ass. (L) Children's Aid Society of Metro Toronto
31 May, 1974 (prepared by the senior staff but does not express the official policy of the Board)
- substantially in agreement with the paper
- feel that contrary to our statement juvenile matters should fall within the jurisdiction of a unified family court
- they are not in agreement to making the court open to the press and other media

1-31 Church (L) The Board of Congregational Life
The Presbyterian Church of Canada
- would like the Commission to consider the role of the Church in support services
- favourable to our recommendations but felt the role of the Church should have been considered

1-32 Lawyer (L) Howard-Gibbon Co. May 1974
- strongly in favour
- encourages Commission to implement proposed consultations with the provinces as soon as possible

1-33 Gen.P. (L) Herbert Adams May 23, 1974
- very much in favour of paper but feels juvenile delinquency should be included in its scope

1-34 Lawyer (L) J. Martin Hattersley
- in favour of most recommendations but feels the court should be at the "magistrate court level"

1-35 Gen. P. (L) C. Bradash, May 17, 1974

- likes the paper but feels something further should be done about high court costs
- this person feels that our legal aid system does not provide the best man for the job

1-36 Gen. P. (L) Ms. Patricia Gauvin, May 17, 1974

- in favour of our paper basically but she has been misrepresented in her case

1-37 Ass. (L) OPTAT (Centre of Treatment for Alcoholics)

- of 108 patients in the centre, 26 are divorced, 49 separated and 33 have marital problems and this letter outlines their reaction to the paper
- all persons agreed with our recommendation for a unified family court and are hopeful for a more humanitarian way of dealing with family matters

1-38 Gen. P. (L) Marge Reitsma

- heartily endorses the paper
- she suggests that a government agency handle alimony payments and then recover from the supporting spouse therefore guaranteeing payment

1-39 Academic (L) Professor Eekelaar, 15 May 1974

- the professor wrote a favourable article on the paper for his students

1-40 Judge (L) Judge Haines, May 13, 1974 (S.C.J.)

- considers the project staff "insoluble"
- a judge's opinion (well founded) that both judges and lawyers do not care for matrimonial problems and he therefore suggests that great emphasis should be made in training and educating judges and lawyers in family law matters

1-41 Ass. (L) Centre d'Animation Familiale de l'Outaouais, May 13, 1974

- the committee which is comprised of many family agencies is very much in favour of all recommendations and strongly urges early implementation

1-42 Gen. P. (L) Patricia Lambert, May 9, 1974
- largely in favour of paper but feels the jurisdiction should be under County Court as the County Court judges are less burdened and are closer to community agencies

1-43 Judge (L) Judge R.F. McLellan, May 9, 1974
- feels that paper expressed the thoughts of a great number of judges in Canada and he is truly in agreement with our proposals for reform

1-44 M.P. (L) Judy LaMarsh
- favourable comment

1-45 Lawyer (L) Harry Lipton, April 16, 1974
- favourable - suggests legal aid officers at location of the court

1-46 Academic (L) Dr. A.I. Cunningham, April 23, 1974
- favourable but felt language incomprehensible

1-47 Women G. (L) K. Benning (White Rock Council of Women) April 21, 1974
- in favour of proposal but feels maintenance orders should be more rigid and would like to see defaulters handled by way of the Criminal Code

1-48 Gen. P. (L) M. Pare, April 17, 1974
- very favourable expressed concern over immediate implementation

1-49 Judge Judge R.E. Lee, April 17, 1974 (Magistrate C.J.)
- this judge is also of the opinion that if Maintenance Orders were dealt with in the same manner as the Income Tax Act there would be no problem

1-50 Lawyer (L) Harris McDonald April 16, 1974
- favourable comment

1-51 Lawyer (L) K.Kirkland, April 10, 1974

- considered the paper a thorough and modern approach to this area of the law

1-52 Lawyer (L) G. Morton April 8, 1974

- favourable
- suggests that the family court be made a single court with a residual jurisdiction left in the Superior Court
- does not endorse "public defender" or para-legal method - giving them permission to plead in court or advise litigants

1-53 Judge (L) Judge F. Cornish, April 8, 1974

- suggests church involvement in support services
- should provide qualified interpreters on request

1-54 Judge (L) Judge H.A. Allard (Family Court)

- supports the recommendation of a unified family court but disagrees with most of our proposals to reach that goal
- he states that judges who have no legal training are more conscious of the legal aspects of the matter before them
- feels the Juvenile Delinquent Act be part of the court
- feels the Commission's assertions should be supported by specific authority

1-55 Psy. (L) Fred Houston April 2, 1974

- favourable
- suggests criminally related matters be within the family court jurisdiction
- i.e. incest etc
- not in favour of press intervention

1-56 Ass. (L) Jack Finlay - Children's Aid Society April 2, 1974

- "most progressive document"
- suggests judges should take courses in the behavioural sciences

1-57 Gen. P. (L) Mr. B. Dallinger April 2, 1974
- finds paper "excellent coverage"

1-58 Gen. P. (L) Paul Germain March 19, 1974
- extremely in favour
- suggests a social agency which would pay support and recover from the respondent

1-59 Ass. (L) Community & Family Services April 2, 1974
- in full support and offers its services to the government

1-60 Judge (L) Judge B.R. Guss (Family Court) March 29, 1974
- in favour of unified family court but feels New Brunswick is more advanced in family law than other provinces

1-61 Gen. P. (L) M. Lackstone, March 27, 1974
- in favour but feels more attention should have been given to "children"

1-62 Ass. (L) Dept. of Social Services March 22, 1974
- very much in favour of paper and states that the proposals are much the same as the Social Services have been suggesting

1-63 Ass. (L) Provincial Judge's Ass. March 1, 1974
- great praise

1-64 Ass. (B) Provincial Court (Family Division) Bathurst, N.B. May 27, 1974
- favourable but feel the adversary system (in a modified way) should be maintained
- suggest a court accountant for maintenance orders

1-65 Ass. (F) (L) L'Organismes Familiaux Associes du Quebec
- very much in favour

1-66 Ass. (L) Family Service of Eastern Nova Scotia May 31, 1974
- mostly favourable
- against press involvement
- suggest more importance on evaluative research

1-67 Social W. (L) Margo Lamont, May 31, 1974

- does not think judges need to be lawyers
- does not feel so much emphasis should have been put on reconciliation (prefers quick divorce laws)
- not in favour of Databank (invasion of privacy)

1-68 Psy. (F) (L) Corporation des Psychologues de Quebec May 28th, 1974

- agrees with most parts of the paper
- they feel that psycho-judicial services be directly in the locale of the Family Courts

1-69 Ass. (L) A.L. Barland (Family Counselling Service) May 31, 1974

- largely in favour
- not in agreement with judges being lawyers and then training them (too costly) when social workers and the like are more experienced in family matters

1-70 Psy. (L) Dr. McConville, June 3, 1974

- applauds concept of a unified family court
- they feel that psychiatric services and such be funded by the court system
- would prefer psychiatrists to be "friends of the court" rather than representatives of one parent or the other

1-71 Academic (L) Prof. John Wade (family law) May 31, 1974

- feels judges should run the circuits and does not feel the court should be house in the same building
- feels juvenile cases should fall under family court jurisdiction

1-72 Ass. (F) (B) Ass. des Officiers de Probation du Québec

- favourable
- feels juvenile cases belong in Family Court
- does not feel parties or lawyers should have access to reports
- does not feel parties should have right to question the validity of the report

1-73 Church (L) Catholic Family Service (June 19, 1974)

- strong supporters of one single court
- feel our laws should be simplified

1-74 Ass. (L) Social Planning Council of Oshawa, June 25, 1974

- largely in favour of recommendations
- do not feel judges should be limited to lawyers

1-75 Ass. (F) (B) La Fédération des Unions de Familles June 28, 1974

- fully agree with all recommendations and would like the social services attached to the court implemented as soon as possible.

1-76 Ass. (F) (B) Centre de services sociaux Richelieu

- in full agreement with our recommendations

1-77 Gen. P. (L) Aimé Benoit, July 30th, 1974

- in agreement suggest changes to divorce laws

1-78 Social W. (L) L. Brigham, July 31st, 1974

- in favour
- complete confidentiality
- does not think judge should be required to be lawyers

1-79 Ass. (B) Vanier Institute of the Family June 17, 1974

- appreciates the work done by the Commission but largely disagrees with our recommendations

1-80 Gen. P. (F) (L) G. Labrecque, June 20, 1974

- extremely favourable

1-81 Gen.P. (F) (L) E. Cristel October 23, 1974

- very favourable suggests implementation as soon as possible

1-82 Ass. (F) (L) Carrefour des Familles Monoparentales Oct. 24, 1974

- in agreement with most recommendations

1-83 Ass. (F) (L) Centre de la Famille de Saint-Jérôme
- very much in favour

1-84 Ass. (F) (L) Services Juridiques Populaires de Sherbrooke Inc.
- very much in favour but feel Juvenile cases should be part of family court

1-85 Ass. (F) (L) Centre communautaire juridique de l'Estrie
August 22, 1974
- greatly in favour of our recommendations

1-86 Gen.P. (L) Frank Maczko November 1, 1974
- very favourable
- would like to see the change soon

1-87 Gen.P. (F) (L) Mme. J. Noel November 29, 1974
- much need reform in laws
- favourable to our paper and would like laws simplified

1-88 Ass. (B) Children's Aid Society of Western Manitoba
January 14, 1975
- very favourable suggest counselling not be made mandatory

1-89 Gen.P. (L) F. Skakum, January 21, 1975
- favourable
- would like court costs cut down to a minimum

1-90 Church (L) Rev. C. Krug, January 24, 1975
- favourable
- feels counselling services should be provided outside the court room setting

1-91 Lawyer (L) J. Inch, January 27, 1975
- very much in favour of one single court
- would like to see Family Courts receive more recognition by government and the profession.

1-92 Gen.P. (L) D. Green, February 13, 1975
- favourable finds paper humanitarian

1-93 Gen.P. (L) H. Armstrong, May 15, 1975
- in favour of family court
- would like to see more human feelings than adversary process

1-94 Gen.P. (L) Mrs. E. Walker
- feels a unified family court would be good as long as the proper support services back it up

1-95 Gen.P. (L) Mrs. L. Ouellet, May 7, 1975
- (see also D-52)
- strongly in favour of unified Family Court

1-96 Gen.P. (L) C. Trites, June 4, 1975
- (see also D-53)
- feels a unified Family Court might be the answer to a lot of problems

1-97 Judge (L) Judge G.F. Smith April 2, 1974
- urgent need for federal family court

1-98 Academic (L) Professor Bell, October 25, 1973
- favours unified Family Court
- would like laws to apply to other groups in community (ie. Communes etc)

1-99 Gen.P. (B) Flora Hogarth November 23, 1974
- in favour of unified family court

1-100 LRC (L) Law Reform Commission of Manitoba, January 15, 1975
- very much in favour will help in any way possible

1-101 Gen.P. (L) N. Peever, February 7, 1975
- in favour
- would like to see the interest of children better considered

l-102 Lawyer (L) R. Wood, February 15, 1975

- not in favour of unified family court
- feels judges need diversity in law

l-103 Govn. (L) Ministry of the Attorney-General (ONT.)
March 21, 1975

- in approval will undertake project at the request of the Commission if needed

l-104 Ass. (L) The Family and Children's Law Commission
(Vancouver, April 21, 1975)

- in favour and ready to assist the Commission

l-105 Gen.P. (L) Herb Finkelberg May 6, 1975

- in favour of such a move

l-106 Gen.P. (L) L. Ohuiginn, May 27th, 1975

- in favour and would like juveniles included in family court system

l-107 Gen.P. (L) Mr. & Mrs. G. Hogson,

- in favour of unified court but would object to it being open to press and public

l-108 Gen.P. (L) Mrs. Jane Stundén, June 4th, 1975

- in favour of new court
- would like the adversary process eliminated
- does not agree with open court

l-109 Gen.P. (L) Mr. P. Branscombe, August 29th, 1975

- very much in favour of one court

l-110 Gen.P. (L) Mrs. S. Andrews, Spetember 18, 1975

- in favour of one court
- would like to see the following implemented:
 - jail terms for those who are delinquents in paying maintenance orders

l-111 Gen.P. (L) Ms. S. Duce, August 18, 1975

- in favour of one court
- family counselling is needed within the court setting itself

1-112 Gen.P. (L) No name

- in favour of unification
- would like to see more justice to men in property and custody settlements

1-113 Gen.P. (L) Mrs. H. Lanctot, October 2, 1975

- in favour of a new family court
- would like counselling services attached to the court

1-114 Gen.P. (L) C.B. Robertson, October 9th, 1975
(see also D-60)

- in favour of a unified family court

1-115 Gen.P. (L) R. Delany, October 6th, 1975

- in favour of a new court if it can solve the delays under the present system

1-116 Gen.P. (L) Mrs. J. Jackson, October 8th, 1975

- in favour of new court

1-117 Judge (L) Mr. Justice Galligan, January 14, 1975

- supports without hesitation
- should be brought about at the greatest possible speed

COMMENTS FROM THOSE IN POSSESSION OF WORKING PAPER BEFORE ITS PUBLICATION DATE

1-118 Lawyer (L) Mr. Hulburt, October 1973

- does not feel court should be part of the Supreme Court but favours a unified family Court

1-119 Academic (L) Prof. N. Bell, November 6, 1973

- fully agrees with recommendations but feels that other unions (homosexuals, commune marriages etc) should be recognized also

1-120 Woman (L) National Council of Women of Canada
(November 13, 1973)

- favourable to suggest family court unification

1-121 Ass. (L) D.M. Farrell, Consultant, Divorce
Counselling and Family Affairs

- in favour of 1) unified family court
- 2) counselling services attached to court
- 3) mandatory investigations
- 4) use of common master file

- would like to see juvenile cases brought within the scope of family court

P A R T III

FAMILY PROPERTY

WORKING PAPER #8

In evaluating the Family Property Paper, the comments were divided into five categories (as shown on the attached Chart). The first three categories relate directly to the 1st, 2nd and 3rd approaches proposed by the Commission in the Working Paper. Each letter was examined and entered in the column which showed the writer's preference. The fourth and fifth columns were for those who were undecided or against any change in the present system.

Sixty-eight letters were received commenting on the Working Paper. On the whole, the 2nd approach received the most support (24 out of 68), although the 3rd approach came in close second (20 out of 68). Several editorials favoured both the 2nd and 3rd approaches due to their similarities. A group of eight university professors felt that the 2nd approach should apply to marital units without children and the 3rd approach to family units. Only four favoured the 1st approach. Eight persons were undecided and a total of 11 thought that no change was needed in the present system or disagreed with any of the proposed approaches.

FAMILY PROPERTY
WORKING PAPER #8

C H A R T

- 54 -

GROUP	APPROACH #1	APPROACH #2	APPROACH #3	UNDECIDED	AGAINST	TOTAL
Editorials	-----	16	3 *	4	1	24
General Public	2	5	4	3	5	19
Academics	-----	1	10	1	2	14
Lawyers	1	1	1	-----	2	5
Associations	1	-----	2 **	-----	1	5
Psychiatrists	-----	1	-----	-----	-----	1
TOTALS	4	24	20	8	11	68

* In the editorials, many thought that both the 2nd and 3rd approaches would be workable.

** A group of eight Academics wrote a brief wherein they stated that the 2nd approach could apply to marital units without children and the 3rd approach to family units.

FAMILY PROPERTY WORKING PAPER #8

COMMENTS

Editorials

8-1 Thursday Post, Lindsay, Ontario, March 15, 1975
- feels the paper gives a good choice for the division of property

8-2 Free Press, London, Ontario, March 20th, 1975
- salutes Commission for taking a stand in this area of law

8-3 Herald, Prince Albert, Sask., April 21, 1975
- good account of recommendations and agrees that there is a definite need for re-assessing property laws

8-4 Banner, Barrie, Ontario, March 24, 1975
- in agreement with community property approach (rec. #2)

8-5 Star, Toronto, Ontario, May 16, 1975
- agrees with 2nd approach
- feels provincial legislatures too "timid"

8-6 Journal, Edmonton, Alberta, April 17, 1975
- slant towards 2nd approach
- feels others not fair to women

8-7 The Western Producer, Saskatoon, Sask., April 3, 1975
- would like to see the 2nd approach made law

8-8 Expositor, Brantford, Ontario, March 27, 1975
- elaborates on the 3rd approach

8-9 Herald, Calgary, Alberta, March 29, 1975
- this article dwells on the 3rd approach and its benefit to businessmen or women

8-10 Whig Standard, March 31, 1975
(author "Eric Nicol")

- in complete disagreement with all three approaches
- feels that the homemaking spouse should be thought as a salaried person who on divorce gets to keep what's hers

8-11 Observer, Pembroke, Ontario, March 21, 1975

- approves of 2nd approach

8-12 Star Phoenix, Saskatoon, Sask., March 25, 1975

- tends to lean towards 2nd approach

8-13 Citizen, Ottawa, Ontario, March 10, 1975

- favours equality
- approach #2

8-14 Tribune, Winnipeg, Manitoba, March 22, 1975

- would favour 2nd or 3rd approach

8-15 Herald, Calgary, Alberta, March 13, 1975

- feels all proposals are fair
- toss between 2 and 3

8-16 Star, Sault-Ste-Maire, March 12, 1975

- "good sense"
- leans towards 2nd approach

8-17 Times & Conservator, Brampton, Ontario, March 12, 1975

- "we applaud the changes but we pause to remember Camelot"
- the editor feels that with marriage contracts marriage will become a business venture and not of "love" as it should be

8-18 Montreal Star, March 15, 1975

- favours 3rd approach

8-19 Windsor Star, March 13, 1975
- "direct and strong-worded paper"
- favours 2nd approach

8-20 Albertan, Calgary, Alberta, March 13, 1975
- favours approach # 2

8-21 Montreal Gazette, March 12, 1975
- favours approach #2 as is much the present system in Quebec

8-22 Journal, Edmonton, Alberta, March 11, 1975
- favours approach #2

8-23 Sun Times, Owen Sound, Ontario, March 18, 1975
- lean towards 2nd approach

8-24 Times, Victoria, B.C., March 13, 1975
- favours 2nd approach

Letters and Briefs

8-25 Gen. P. (L) Mr. R. Boyd, March 10, 1975
- primarily in favour of 1st approach
- would suggest a specified period of 10 years co-habitation before any sharing

8-26 Gen.P. (L) Mrs. B. Keyath, March 13, 1975
- agrees with 2nd approach
- specifically mentions that property owned by widows from their first marriage should not become part of the community property in the second marriage

8-27 Gen.P. (L) Mr. N. McPherson
- would favour 3rd approach
- not certain here - the case involves the matrimonial home purchase and retain in first marriage but lost in the second

8-28 Gen.P. (L) Mr. J. Tai, March 13, 1975
- disagrees with all 3 approaches would like the retention of the present law

8-29 Lawyer (L) Mr. H. Grey, April 16, 1975
- agrees with approach #2 but strongly opposes the 3rd approach

8-30 Gen.P. (L) Mrs. E Fogel, April 30, 1975
- having helped to make the family business a successful one, Mrs. Fogel believes that the 3rd approach is fair

8-31 Gen.P. (L) Mr. W. Krawec, March 14, 1975
- agrees generally with 3rd approach
- feels that a wife shouldn't have a share in what the husband owned previous to the marriage

8-32 Gen.P. (L) Mr. J. Tritt, March 13, 1975
- does not feel any of the approaches are being fair to men
- feels that property laws are always made to benefit the woman and something should be done to help men

8-33 Academic (L) Prof. Peter Rastall, March 20th, 1975
- would favour approach #3
- gives a suggestion that the sharing should depend on the amount of years of co-habitation

8-34 Gen.P. (L) Mme. J. Hebert, May 5, 1975
- would favour the 2nd approach

8-35 Lawyer (L) Mr. R. Wilson, May 5, 1975
- feels the logical approach is #3
- suggests that in its proposals the Commission should have considered the rights of children more carefully (i.e. equal portion from each spouse for children)

8-36 Academics (B) Eight Professor at the University of Waterloo, May 7, 1975

- proposed the adoption of the separate property regime (2) as applicable to martial unites with no children and the deferred-sharing regime (3) as applicable to family units

8-37 Gen.P. (B) P. Nagy, May 9, 1975

- would not favour any property laws for the benefit of women until the discrimination against men in custody cases is not delt with first

8-38 Academic (L) A. Desrochers, June 4, 1975

- feels that the Commission should have ellaborated on the Quebec regime as it is working very well

8-39 Ass. (L) Organismes Familiaux Ass. du Quebec, May 14, 1975

- does not approve of any of the approaches
- feels that which exists in the province of Quebec as the best

8-40 Gen. P. (L) Ms. Maureen Giroux, June 19, 1975

- favours 2nd approach
- finds the marriage contracts before the enactment of the new laws (in Quebec) are unjust
- if she would have had no contract the property would have been split 50/50 therefore she feels that those divorced before the new law should be able to divide 50/50 and not according to the marriage contract

8-41 Academic (B) T. Vartianian, August 7, 1975

- basically favours 3rd approach although she mentions two faults:
1) true partnership means the sharing of profits and lossess
2) does not protect the interest of the non-earning spouse

8-42 Gen.P. (L) Mr. J. Rigg

- feels the Commission (or government) should first try to achieve uniformity in laws throughout Canada
- personally he feels that all family laws should be under the federal jurisdiction

8-43 Ass. (B) Family Service Ass. of Metro-Toronto August 15, 1975

- favours deferred sharing of property (#3)

8-44 Lawyer (B) Mr. P. Cyr, August 26, 1975
(see also 12-17)

- does not feel any proposals mentioned will facilitate the division of property on dissolution of marriage

8-45 Gen.P. (L) Mme. J. Gauvreau, September 5, 1975

- prefers 1st approach
- feels well-trained judges better equipped to handle such matters

8-46 Gen.P. (L) Mr. P.F. Groome, Oct. 17, 1975

- does not approve of any of proposals
- feels women already benefit too much from men

8-47 Gen.P. (L) Mrs. M. Copp, August 8, 1975

- "firmly believes that 'Common Ownership' is the only sensible solution to problem"

8-48 Psy. (L) Dr. K.R. Ferguson, September 18, 1975

- prefers 2nd approach but definitely not the 1st.

8-49 Academic (B) Professor M. Balych

- finds that the Commission's tenets to eliminate discrimination and to lend legal dignity and worth to a spouse, regardless of his/her economic role in the marriage, are most commendable. But, the methods proposed for the achievement of these desirable goals are very bad. The principle of equal sharing of material assets is

is anything but fair (except in those cases where the spouses were (except in those cases where the spouses were "economic equals" before, during and after separation.

8-50 Academic (L) (see 13-28 Shaw)

- would favour 2nd approach

8-51 Ass. (L) Mrs. Fern Boyd, August 8, 1975

- her work involves counselling partners in matrimonial disputes and therefore thinks that theoretically the most reasonable approach would probably be to leave the matters to the judges' discretion

8-52 Gen.P. (B) Mr. P.L. Bonneau, August 10, 1975

- " prefer third approach - no fixed rules - requiring a judge, at separation or divorce, to divide property fairly"

8-53 Gen.P. (L) Mme L. Tremblay, October 15, 1975

- finds all three approaches unacceptable
- feels the laws would still be unfair to women

8-54 Gen.P. (L) Mr. A. Aulsebrook, June 5, 1975

- feels that before laws are changed to benefit women something should be done about the unfair custody laws for men

8-55 Lawyer (L) Mr. L.R. Duncan, June 3, 1975

- would favour the 1st approach where a qualified judge could weigh both sides of the story

8-56 Gen.P. (L) Mr. P. Rastall, March 20th, 1975

- believes in pooling of property but feels it should depend on how long the couple has lived together

8-57 Lawyer (L) Mr. B. Berman, April 14, 1975

- "I think the Commission is in essence "waffling" on the issue simply because of the pressure that appears to be placed by Women's Organizations that they should be compensated and maintained. They seem to want their cake, the icing and the pleasure of eating it."

8-58 Gen.P. (L) Mr. F.O. Gagnon, April 14, 1975

- would like to see fairer property laws for men

8-59 Academic (L) Mr. Martin Davis, March 20th, 1975

- it is this man's opinion that a fair allocation of matrimonial property between spouses could be reached very simply through reform of the tax laws particularly with reference to income tax

8-60 Ass. (B) The Ontario Committee on the Status of Women, March 24th, 1975

- in complete agreement with the third approach
- "both partners should have equal rights to all income and property acquired during marriage, as well as to its management and control. Each spouse should have an equal responsibility for the support of the family."

P A R T IV

MAINTENANCE ON DIVORCE

WORKING PAPER #12

The Working Paper "Maintenance on Divorce" received comments from 46 groups and individuals. Only 7 did not favour a maintenance that did not include a notion of fault. Of those who did disagree, several thought that the enactment of this principle would leave women in poverty. It is surprising to note here that those persons objecting to the principle of "no fault" maintenance were mainly males, two of whom were lawyers. Equally surprising is the enthusiastic response received from the various women groups throughout Canada.

The majority of those in favour expressed a desire for immediate legislation in this area. Several persons felt that the Commission should have elaborated further on the proposal for determination of the amount of maintenance and that it should clarify the use of the words "the resonable needs of the spouse".

MAINTENANCE ON DIVORCE

WORKING PAPER #12

SUMMARY CHART

	Favourable	Unfavourable	TOTAL
Editorials	15	2	17
Letters & Briefs	24	5	29
Telegrams			
TOTALS	39	7	46

MAINTENANCE ON DIVORCE
WORKING PAPER #12

CHART

GROUP	FAVOURABLE	UNFAVOURABLE	TOTAL
General Public	12	3	15
Lawyers	1	2	3
Academics	3	-	3
Women's Groups	6	-	6
Associations: Family Services social workers	2	-	2
TOTALS	24	5	29

MAINTENANCE ON DIVORCE WORKING PAPER #12

COMMENTS

Editorials

12-1

Toronto Star, July 29, 1975

- this article is a direct quote of Ed Ryan's views on the paper
- it tends to favour the proposals made

12-2

Kitchener-Waterloo Record

- "The Commission's recommendations appear well headed in the direction of making divorce less trying on all parties and promote the well-being of society as a whole

12-3

The Ottawa Journal

- feels that if recommendations are put into legislation it may finally mean equality of sexes in that field

12-4

The Windsor Star

- "In theory, the idea is sound"
- "In practice such reform of divorce laws, without accompanying changes in the entire role of women in the labour market, will do little save throw many women into poverty?"

12-5

The Brantford Expositor

- finds the paper sound

12-6

Herald-Gazette, Bracebridge, Ontario, August 7, 1975

- ("In my opinion" by Lynn Watson)
- praises the paper
- "perhaps with the abolition of alimony, some women will not only preach independence but practice it as well,"

12-7

The Sault-Ste-Marie Star, August 8, 1975

- "concept represents good sense"

12-8

Owen Sound's Sun-Times, August 11, 1975

- "the idea is good in theory... (but) ... many people, particularly women, will be dumped into poverty if forced to try to support themselves after many years of marriage."

12-9

Ottawa Journal, August 2, 1975

- "it shouldn't be too hard to win a public concensus at least for the idea that alimony should be paid only as long as it is needed"

12-10

Edmonton Journal, August 6, 1975

- approves of paper feels it fills the gap of equality

12-11

Times & Conservator, Brampton, Ontario, July 31, 1975

- favourable comment
- quotes a city lawyer as saying the paper "is the best news in years"

12-12

Ottawa Citizen, August 28, 1975

- favours paper
- much needed equality

12-13

Le Carillon, Hawkesbury, Ontario, August 7, 1975

- favourable account of appear

12-14

Le Nouvelliste, Trois Rivi  re, P.Q., August 7, 1975

- favourable
- " a good step in the direction of equality"

12-15

Le Droit, Ottawa, Ontario, August 2, 1975

- "very logical"

12-16

La Tribune, Sherbrooke P.Q., August 6, 1975

- favourable
- "paper clarifies the position of each spouse at divorce"

12-17

La Presse, Montreal P.Q., August 7, 1975

- favourable
- long awaited changes due to society's new norms

Letters and Briefs

12-18 Lawyer (B) (see 8-44 Cyr)

- feels government intervention is needed in maintenance orders but no change in our present laws

12-19 Gen.P. (L) M. Marcel Naud, July 30, 1975

- favourable but feels that in circumstances where the divorcee cannot maintain herself, (for physical or mental reasons as stated in paper) the person in question should be supported by the government and not the ex-husband or wife

12-20 Gen.P. (L) Mrs. L. Day, August 3, 1975

- agrees with paper but mentions another question of law not relevant to the paper

12-21 Gen.P. (L) Mr. D. Bartholomew, August 8, 1975

- very much in favour of paper but feels that the recommendations should be enacted immediately

12-22 Academic (L) M. André Risi, August 18, 1975

- would not hesitate to agree with the recommendations
- feels it is about time some equality

12-23 Gen.P. (L) Mrs. B. Feromski, August 20, 1975

- "let me commend you for your insight into what is fast becoming and insurmountable problem"
- has one question -- would a woman be deprived of continuing her education if she is to be put into the working force soon after the divorce.

12-24 Gen.P. (L) Mr. D. Hodgkinson, August 22, 1975
- "excellent" and "well prepared"
"worthy of praise"

12-25 Gen.P. (L) Mrs I. Stanley, August 30, 1975
- long-overdue

12-26 Gen.P. (L) M. Paul Pelletier, September 9, 1975
- finally justice may be brought for men

12-27 Lawyer (L) M. L. Robichaud, September 9, 1975
- in complete disagreement with recommendations
- feels that the Commission has contradictory
statements in that it fully appreciates
that a husband maintain his wife and family
during marriage but after marriage (while
he is still gainfully employed,) he should be
rid of all responsibilities

12-28 Women (B) Women of Unifarm, September 12, 1975
- in complete agreement with recommendations
but feels government agencies should try and
educate the public further on laws concerning
Canadian families

12-29 Gen.P. (L) Mr. J. Hunter, September 19, 1975
- this woman does work but maintains that her
salary is not enough to maintain her standard of
living therefore her maintenance awards help
- she is also of the opinion that maintenance
payment should not be taxable

12-30 Academic (B) Mr. Miron Balych
- "...if all of the commission's proposals were
enacted, Canadian divorce laws would, indeed,
be much more equitable."

12-31 Academic (L) See 8-50 and 13-28 Shaw

- supports "no fault maintenance"

12-32 Gen. P. (L) Ms. D. Bartholomew, August 15, 1975

- in agreement with paper but would like these recommendations put into law as soon as possible

12-33 Gen. P. (L) No name, Sept. 5, 1975

- does not agree with proposals
- feels the Commission is "opening the doors to those who commit adultery"
- finds that recommendation will encourage "vice"

12-34 Gen.P. (L) See 13-35 Legault

- favour "no fault maintenance"

12-35 Gen.P. (L) See 13-37 Baines

- feels it is about time women stopped letting men pay for their support for a lifetime

12-36 Ass. (L) See 13-44 Social Planning Council of Oshawa-Whitby

- on the whole the group supports the paper but gives some suggestions:

- 1) the group felt that it should be as difficult to get a marriage license as a driver's license since the future depends on the stability created in the marriage
- 2) the group also felt premarital education be a requirement to obtain a marriage license

12-37 Lawyer (L) See 13-45 Grant

- Mr. Grant feels that the Commission has recognized the inevitable demise of the archaic social stereotype which places the husband in the role of "provider" and the

wife in that of "dependant".

12-38 Women (Telegram) Ms. Cathryn Logan, Co-ordinator-International Womens Year, Nova Scotia
- agrees with concepts outlined in paper

12-39 Women (Telegram) Ms. Jantet Dale, P.E.I. Advisory Council on Status of Women
- Ms. Dale fully supports ideas in Working Paper

12-40 Gen.P. (Telegram) Ms. Julie Bensen, Law Student
- fully agrees with all recommendations

12-41 Women (Telegram) Ms. Janet Carney, Chairperson Voluntary Steering Committee for International Women's Year
- agrees with ideas presented and trusts legislation supporting these principles will be enacted through Parliament shortly

12-42 Women (Telegram) Ms. Marlene Clark, Secretary, P.E.I. Advisory Council on the Status of Women
- fully agrees with proposals outlined in Working Paper

12-43 Women (Telegram) Ms. Joan Calder
- totally supports the re-defining and clarification of inter-spousal maintenance on divorce as proposed in Working Paper 12

12-44 Ass. (L) Capital Region Justice Council, courts and legal services committee, January 5, 1976
- the group strongly supports the thrust and focus of the paper

12-45 G.P. (L) Mme Louise Giroux, Responsable du Movement Les Services Communautaires (Cap Rouge)
- feels women have nothing to fall back on when divorced
- would not favour our proposals

12-46 Gen.P. (Telegram) Ms. K. Scott Wood, January 5, 1976

- " I want to register my enthusiastic support
for the concept outlined in Working Paper #12".

P A R T V

DIVORCE

WORKING PAPER #13

The total response for the Working Paper, "Divorce" was 47. This consisted of 37 favourable comments and 10 unfavourable comments.

Of those who disagreed with the Commission's proposal, many feared an increase in the number of divorces. If divorce is made too "easy" they said, the whole institution of marriage "till death do us part" will collapse.

Although the majority favoured the main recommendation of abolishing the present grounds for divorce, some did not agree with the other recommendations. In order of importance they were:

- 1) would like the retention of at least one year's separation
- 2) would like the retention of separation period for couples with children (e.i. at least one year)
- 3) would prefer a closed court for all family law matters including divorce
- 4) would like the retention of the adversary process

DIVORCE

WORKING PAPER #13

SUMMARY CHART

	Favourable	Unfavourable	TOTAL
Editorials	15	2	17
Letters & Briefs	22	8	30
TOTALS	37	10	47

DIVORCE
WORKING PAPER #13

CHART

GROUP	FAVOURABLE	UNFAVOURABLE	TOTAL
General Public	15	4	19
Academics	4	1	5
Lawyers	1	1	2
Judges	-	1	1
Psychiatrist	-	1	1
Associations: Family Service Social Worker	2	-	2
TOTALS	22	8	30

DIVORCE WORKING PAPER #13

COMMENTS

Editorials

13-1 *Toronto Star, Sept. 12, 1975*
- in favour of divorce paper
- gives a good and accurate account of our recommendations

13-2 *Toronto Star, September 12, 1975*
- in complete agreement with the paper
- emphasizes that marriage breakdown should be the only grounds for divorce

13-3 *Globe & Mail, Toronto, Sept. 12, 1975*
- in favour of paper

13-4 *News, Medicine Hat, Alberta, Sept. 16, 1975*
- very much in favour
- does not feel that if the Divorce Act is amended it will necessarily bring the Divorce rate up--the editor feels that it will simply help those whose marriages are already dead

13-5 *Province, Vancouver, B.C., Sept. 18, 1975*
- favours paper
- gives account of Ed Ryan's statement "Throw out the 'men support women' rule"

13-6 *Expositor, Brantford, Ontario, Sept. 29, 1975*
- feels the Commission presents a sound case for more sweeping overhaul of the Act

13-7 *Transcript, Moncton, N.B., Sept. 25, 1975*
- feels the "no fault" concept will eliminate the name calling and labelling now in divorce

13-8 Citizen, Ottawa, September 13, 1975
- "excellent", "intelligent report."
- recommends its reading

13-9 Spectator, Hamilton, Ontario, September 24, 1975
- "while there is much in the Commission's paper that appeals to our common sense, there is still a distinct feeling that in the end the concept of the family unit will suffer."

13-10 The Citizen, Prince George, B.C., Sept. 12, 1975
- a good account of both sides but favour "no fault" divorce

13-11 Montreal Star, Sept. 19, 1975
- feels that "no fault" concept makes "a lot of sense" and that the Commission's recommendations are "sound"

13-12 Sun-Times, Owen Sound, Ontario, Sept. 23, 1975
- feels that easier divorce laws will provide a chance for people to try to successfully rebuild their lives

13-13 Globe & Mail, Toronto, Sept. 20, 1975 (no name)
- feels that a degree of fault concept should remain
- there should be a waiting period to reassess the marriage - suggests 1 year

13-14 Tribune, Winnipeg, Man., Sept. 13, 1975
- "Bravo to the Federal Law Reform Commission for attempting to update Canada's archaic divorce laws"

13-15 Expositor, Brantford, Ontario, Sept. 16, 1975
- in favour of paper
- denies those who suggest it to be "radical"

13-16 Le Droit, Ottawa, Ontario, Sept. 16, 1975
- in favour of paper
- feels it might risk increase in divorces

13-17 Globe & Mail, Toronto, January 12, 1976
- favours "no fault" divorce
- would not go as far as to suggest separation grounds
- would prefer a one year separation

Letters & Briefs

13-18 Gen.P. (L) Mrs. A. Fair, Sept. 24, 1975
- she would like the law left as it is (no divorce for 3 years)

13-19 Academic (L) Ms. Reta Morton, Sept. 24, 1975
- feels that although "divorce on demand" will weaken and perhaps destroy the institution of marriage as we know it -- hopefully something better will emerge from the "wreck"

13-20 Gen.P. (L) Mrs. A. Plamondon, Sept. 24, 1975
- would agree to divorce on demand and also "no fault" divorce
- would like something done about the high cost of divorce

13-21 Gen.P. (L) Mr. S. Barl, Sept. 25, 1975
- in total agreement with recommendations

13-22 Gen. P. (L) Mme. J. Beloile
- would like more severe divorce laws in this country

13-23 Gen.P. (L) Mr. D. Lang, Sept. 26, 1975
- would strongly favour both recommendations

13-24 Gen.P. (L) M. Gagnon, Sept. 5, 1975
- in complete disagreement with paper
- feels the whole country is being demoralized

13-25 Gen.P. (L) Mr. R. Pommerville, Sept. 10, 1975

- agrees with the fault issue being taken out of divorce
- also agrees with "divorce on demand"

13-26 Gen.P. (L) Mrs. B. Feromski, Sept. 17, 1975

- agrees with most recommendations except that of open court

13-27 Academic (L) Dr. John F. Peters, Sept. 22, 1975

- agrees with all recommendations but not "divorce on demand"
- feels that "removal of separation before divorce only paves the path to easy divorce"

13-28 Academic (B) Mr. Miron Balych

- "The Commission is to be commended for making a genuine, and successful effort to get at the roots of the complex problems that surround the controversial issue of divorce"

13-29 Academic (L) Mr. Stewart Shaw, Sept. 28, 1975
(see also 8-50 and 12-31)

- agrees with most of the paper but feels the judges and lawyers are not the best qualified persons to decide on divorces (Mr. Shaw is a social worker)

13-30 Psy. (L) Dr. Serge Charpentier, Sept. 29, 1975

- agrees with the opinion of Mme Barrette-Joncas

13-31 Academic (L) Prof. H. Mazeaud, October 7, 1975

- does not agree with a great number of the recommendations

13-32 Gen.P. (L) Mr. B. Clarke, Sept. 12, 1975

- agrees "wholeheartedly"

13-33 Gen.P. (L) Mrs. J. Williams, Oct. 21, 1975

- favours "no fault" divorce
- finds that the present laws are unfair to couples who can no longer live together but have not and will not commit adultery in order to get a speedy divorce

13-34 Gen.P. (L) Ms. Dee Lonnnon, October 21, 1975

- favours "no fault" divorce
- stresses the fact that these changes are long overdue and should be made law before they too become obsolete

13-35 Gen. P. (L) Mrs. D. Legault, Sept. 11, 1975
(see also 12-34)

- favours "no fault" divorce

13-36 Gen. P. (L) Mr. A. Nicolette, October 14, 1975

- favours all recommendations made by Commission

13-37 Gen.P. (L) Mrs. A.W. Barnes, Sept. 30, 1975
(see also 12-35)

- favours "no fault" divorce coupled with no fault maintenance

13-38 Gen.P. (L) Mrs. K.M. Young, October 6, 1975

- favours "no fault" divorce but would prefer one year's separation

13-39 Gen.P. (L) Mrs. B. Storms, Sept. 13, 1975

- favours "no fault divorce"

13-40 Gen. P. (L) MME. V.L. , Sept. 26, 1975

- would favour "no fault divorce"

13-41 Lawyer (L) Mr. R.J. Hobson, October 24, 1975

- not in favour
- "generally speaking the system should only provide an impartial atmosphere for the resolution of disputes. It must be up to professionals to use the system for the benefit of those who need it...." - he feels the

retention of the adversary process is necessary to protect those unfortunate individuals who are unable to reasonably settle the issues after a marriage breakup

13-42 Gen.P. (L) Mme. J. Hébert, Nov. 24, 1975
- feels no fault divorce will mean "chaos"

13-43 Judge (L) Judge David M. Steinberg December 15, 1975
- in strong agreement with the dissenting view of Mme Joncas.
- the judge is of the opinion that counselling services established to assist the Courts are generally not utilized for the purposes (example - the State of California)
- Judge Steinberg feels that the adversarial process must remain in the system

13-44 Gen.P. (L) Mr. George Legris (letter sent to Manitoba Law Reform Commission and forwarded to us for action)
- although this person has not read the divorce paper, he would certainly favour "no fault" divorce -- having been a respondent in a divorce action he felt that there was urgent need for equality and fairness in divorce proceedings

13-45 Ass. (L) Social Planning Council of Oshawa-Whitby December 15, 1975
(see also 12-36)

- the group was in unanimous agreement with "no fault" divorce
- the group agrees with all recommendations and felt the paramount concern should be for the welfare of the children and that both social work and legal resources should safeguard the child's interest

13-46 Lawyer (L) Mr. Stephen M. Grant, December 22, 1975
(see also 12-37)

- Mr. Grant fully agrees that the concept now in existence should be eliminated completely in divorce
- he feels that in doing so much bitterness and cost will be reduced when a marriage breaks down and solutions need to be found for immediate problems

13-47 Ass. (Report) One Parent Families Association of Canada

- would favour "no fault" divorce
- would like the retentions of at least one year's separation before granting of divorce
- would suggest more counselling and conciliation services performed by the court

Due to unforeseen events mentioned in the introduction of this report, the last two Working Papers, "Maintenance on Divorce" and "Divorce", did not generate a degree of response commensurate with the weighty issues involved. Therefore, this section will include reports of audience reaction by the members of the Family Law Project Staff who were active in presenting the Working Papers to various groups throughout Canada. In these reports, the staff members gave their assessment of the general reaction of those groups and individuals with whom they spoke. The author also incorporated the views of those persons who were contacted by phone.

My contribution to the Family Law Project related mostly to the completion of the various studies undertaken by the specialists employed by the Commission for incorporation into the general recommendations of the Commission. My task was mainly to prepare the recommendations while providing information in the French language to the Family Law Project in my capacity as civil law specialist. Thus, during the past two years, I frequently presented the views of the Law Reform Commission of Canada at meetings, panels, seminars, conferences, interviews and informal discussions on the proposed subjects of reform. In my opinion, the principles governing the establishment of a unified Family Court are unanimously accepted. However, there is still discussion and disagreement on matters of jurisdiction and procedure.

The recommendations on sharing of property between husband and wife at the time the marriage is terminated are unanimously accepted by women whereas men seem to be more hesitant. It should be noted, however, that the proposed reform in this area has much less impact in Quebec than in the common law provinces because Quebec has long upheld the sharing of property at the end of a marriage.

The new principles proposed with respect to maintenance have raised some concern but they seemed to

have received general support by the end of the International Women's Year. The new concept of maintenance as corresponding to "reasonable needs" seems to be generally accepted.

Divorce and the position of children of parents in conflict are, in my opinion, the subjects of greatest controversy. Most people seem to agree with the idea of abandoning the aleatory character of the notion of fault and neutralizing divorce procedures; however, there remains a concern for avoiding untimely or repeated divorces. Many seem to support a mandatory period of separation as final proof of the breakdown of the marriage. They seem to think that this kind of requirement preserves the serious nature of marriage and divorce. Many seem to reproach the Law Reform Commission of Canada for failing to consider the children who often do not take part in the resolution of family conflicts.

François Chrétien
Lawyer
Researcher
Family Law Project

Terrence J. Wuester, Ass. Professor of Law, University of Victoria (former member of the project)

Professor Wuester played an important part in the writing of the Family Property Working Paper. But, during his stay at the Commission and in speaking on behalf of the Commission with various Community groups (mainly general public) he found that when speaking on the subject of "no fault" divorce, he felt that over 75% of the people were in favour.

TORONTO STAR

Saturday, Nov. 28/75

POLL

Question: Do you approve or disapprove of the idea of no-fault divorce where only the needs of the concerned parties are assessed and where no effort is made to assess guilt or innocence?

	Approved %	Disapproved %	Don't Know %
National	49	38	13
Men	49	38	12
Women	48	38	12
Single	49	36	15
Married	49	39	11
Widowed, Divorced Separated	44	33	23

Responses with respect to our appeal
by phone to various groups and
individuals

Mr. H. Allan Leal: Chairman, Ontario Law Reform Commission

The Ontario Law Reform Commission has not taken a stand on the federal divorce Working Paper and will not be in a position to do so until after the New Year, but, Mr. Leal personally supports "no fault" divorce.

Professor Lorna Marsden: President of the National Action Committee for the Ontario Status of Women

Professor Marsden informed the writer by phone that the Ontario Status of Women voted unanimously in favour of "no fault" maintenance and divorce.

Mrs. England: National Council of Women

The group supports "no fault" divorce and maintenance.

His Honour Judge David M. Steinberg,
Family Division,
Province of Ontario.

Son Honneur le juge David M. Steinberg
Division de la famille
Province de l'Ontario.

18-9-72

Dear Sir:

I have taken on a project for the Federal Law Reform Commission to enquire of the judiciary in Canada its views as to the feasibility of a unified Family Court. It is our hope that with your assistance, a model unified Family Court statute might be drafted for consideration by the Commission.

The concept of such a court, dealing with all domestic problems is not new, and has been advocated by many counsel and judges with considerable experience in matrimonial matters. The constitutional and political problems in developing such a court are well known, but that is not of present concern. We wish at this time, with the benefit of your experience, to attempt to develop an "ideal" court system dealing solely with family law problems and in that respect, I would ask for your opinions and guidance on the following issues:

1. Should there be a unified Family Court dealing with all aspects of domestic relations law?
2. If you think a unified Family Court is feasible, how should the Court be structured within the existing levels of the judiciary of your Province?

Monsieur le juge,

A la demande de la Commission de Réforme du Droit du Canada, j'ai accepté la direction d'une recherche visant à savoir si les autorités judiciaires au Canada croient à la possibilité et à l'opportunité de la création d'un tribunal de la famille à compétence globale. Grâce à votre collaboration, nous espérons pouvoir préparer un modèle de projet de loi relatif à un tribunal de la famille à compétence globale pour le soumettre à l'examen de la Commission.

Le concept d'une telle cour compétence à régler tous les problèmes domestiques n'est pas nouveau; plusieurs juristes et de nombreux juges possédant une expérience considérable dans les questions matrimoniales l'ont préconisé. Personne n'ignore les difficultés politiques et constitutionnelles inhérentes à la création d'une telle cour mais ces questions ne sont pas l'objet de notre préoccupation actuelle. Pour le moment, nous désirons, avec l'aide de votre expérience, essayer de définir un système "idéal" d'une cour étant seule compétente à traiter des questions de droit de la famille. C'est dans cette optique que je fais appel, pour ma gouverne, à vos opinions sur les questions suivantes:

1. Les problèmes familiaux devraient-ils tous relever d'un seul et même tribunal?
2. Si vous êtes d'avis qu'un tribunal de la famille à compétence globale est, dans le domaine des possibilités, quelle place tiendrait une telle cour dans le cadre actuel des divers niveaux judiciaires dans votre province?

3. How should the existing Family Court structure within your Province be incorporated into such a Court?

4. What should the approach of the Court be with regard to such matters as:

- a) Marriage and divorce counselling
- b) Custody investigation and counselling
- c) Pre-marital counselling

How might these services be incorporated within the procedures of the Court system?

5. Would a Judgeship in the trial division of a unified Family Court require such specialization as to preclude the Judge from hearing matters of a non-family nature?

6. What, to your knowledge, is the current state of development of the Family Court system in your Province, and how able is it to assume full jurisdiction over all family matters.

May I prevail upon you to comment on the above issues, and any other matters which you feel touch on the concept of a unified Family Court.

Please write me at:

Family Law Project
Law Reform Commission of Canada
130 Albert Street
Ottawa K1A 0L6.

3. Comment incorporer les structures actuelles des cours de la famille de votre province dans la nouvelle cour?

4. Quelle ligne de conduite devrait adopter la nouvelle cour eu égard à des questions telles que:

- a) l'assistance et la consultation sur le mariage et le divorce
- b) l'assistance et la consultation sur l'enquête relative à la garde d'enfants et aussi sur la garde d'enfants elle-même
- c) la préparation au mariage

De quelle manière ces services pourraient-ils être intégrés aux procédures de la nouvelle cour?

5. Un juge de première instance d'un tribunal de la famille à compétence globale devrait-il être un spécialiste en ce domaine à un point tel qu'il ne serait pas habilité à entendre des causes hors le domaine du droit de la famille?

6. Selon vous, quel est l'état actuel du développement du système des tribunaux de la famille dans votre province et dans quelle mesure ce système pourrait-il assumer la juridiction globale sur toutes les questions relatives à la famille?

Vos commentaires sur les questions soulevées dans la présente lettre me seront très utiles mais n'hésitez pas pour autant à me faire connaître votre avis sur tout autre aspect du concept d'un tribunal de la famille à compétence globale.

Veuillez, je vous prie, m'écrire à l'adresse suivante:

Section de recherche du droit de la famille
Commission de Réforme du Droit de Canada
130, rue Albert
Ottawa K1A 0L6, Ontario.



EVALUATION OF COMMENTS RECEIVED
IN THE AREA
OF
FAMILY LAW

1976